

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Douglas Ledet, on behalf of himself and all others similarly situated, Plaintiff	:	CIVIL ACTION
	:	
v.	:	
Ascentive, LLC, a Delaware Limited Liability Company	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

January 18, 2011

David S. Senoff, Esquire

Plaintiff

Date**Attorney-at-law****Attorney for**

(215) 609-1350

(215) 609-1351

dsenoff@cbmclaw.com

Telephone**FAX Number****E-Mail Address**

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: P.O. Box 32, Sedeka, MN 56477

Address of Defendant: 201 Spring Garden Avenue, Suite 400, Philadelphia, PA 19123

Place of Accident, Incident or Transaction: Philadelphia, Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts

2. ☐ FELA

3. ☐ Jones Act-Personal Injury

4. ☐ Antitrust

5. ☐ Patent

6. ☐ Labor-Management Relations

7. ☐ Civil Rights

8. ☐ Habeas Corpus

9. ☐ Securities Act(s) Cases

10. ☐ Social Security Review Cases

11. ☐ All other Federal Question Cases

(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts

2. ☐ Airplane Personal Injury

3. ☐ Assault, Defamation

4. ☐ Marine Personal Injury

5. ☐ Motor Vehicle Personal Injury

6. ☐ Other Personal Injury (Please specify)

7. ☐ Products Liability

8. ☐ Products Liability — Asbestos

9. ☒ All other Diversity Cases

(Please specify)

Breach of Contract

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, David S. Senoff, Esquire

counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: January 18, 2011

David S. Senoff
Attorney-at-Law

65278

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: January 18, 2011

David S. Senoff
Attorney-at-Law

65278

Attorney I.D.#

CIV. 609 (6/08)

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Douglas Ledet, on behalf of himself and all others similarly situated (b) County of Residence of First Listed Plaintiff <u>Wadena, Minnesota</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) <u>David S. Senoff, Esq.</u> <u>Caroselli Beachler McTiernan & Conboy, 1500 Walnut St., Ste 507</u> <u>Philadelphia, PA 19102 (215) 609-1350</u>	DEFENDANTS Ascentive, LLC, a Delaware Limited Liability Company County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) _____
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6										

IV. NATURE OF SUIT (Place an "X" in One Box Only)			
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	CRIMINAL MATTERS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	FORFEITURE/REPLEVIN <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions
<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) _____ <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. § 1332 (d)</u> Brief description of cause: <u>Plaintiff brings Class Action Complaint against Defendant for acts of fraud in conjunction with the sale of its products.</u>
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VII. REQUESTED IN COMPLAINT:	<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ <u>excess of \$5,000,000.00</u>	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE	SIGNATURE OF ATTORNEY OF RECORD
<u>1/18/2011</u>	<u>David S. Senoff</u>

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

Douglas Ledet, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

Ascentive LLC, a Delaware Limited
Liability Company,

Ascentive.

Civil Action No: _____

COMPLAINT – CLASS ACTION

JURY TRIAL DEMANDED

Plaintiff Douglas Ledet for his Class Action Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigation conducted by his attorneys:

NATURE OF THE ACTION

1. Plaintiff Douglas Ledet brings this Class Action Complaint against Ascentive Ascentive, LLC (“Ascentive”) for acts of fraud perpetrated in conjunction with the sale of Ascentive’s software products. In clear contradiction to the law, and Ascentive’s public assertions, Ascentive has designed its software to defraud consumers by deceiving them into paying fees to fix fabricated and/or overstated computer problems. In essence, Ascentive falsely identifies computer problems and characterizes them as “severe” in an attempt to scare consumers into purchasing its software.

2. Ascentive sells a variety of software packages that Ascentive claims will increase the speed and performance of a consumer’s personal computer (“PC”) and Internet connection. Ascentive’s most popular software product is “PC SpeedScan Pro,” (hereinafter “SpeedScan

1 Pro” or “PC SpeedScan Pro”) which Ascentive sells through numerous websites, including:
2 www.FinallyFast.com, www.FastAtLast.com, www.SpeedScanPC.com,
3 www.ScanYourPC.com, www.FinallyFastPC.com, www.PCFinallyFast.com, and
4 www.Ascentive.com.

5 3. Ascentive asserts through its website that its software **products can** instantly
6 remove all computer errors found, and return a consumer’s PC to its **original high** performance.
7 Specifically, “PC SpeedScan performs a comprehensive search of **your computer** to locate and
8 remove error and invalid files. PC SpeedScan can help improve your computer’s overall
9 performance by getting rid of these unwanted files.” See, Exhibit A, attached hereto as a true
10 and accurate copy of the index page of Ascentive’s website, www.FinallyFast.com.

11 4. In actuality, the motive behind Ascentive’s SpeedScan Pro software is far more
12 sinister. Ascentive’s *modus operandi* is to offer a “free diagnosis” to anyone who owns a
13 computer. Regardless of whether errors are actually present on a consumer’s PC, Ascentive’s
14 software invariably indicates, in an extremely threatening manner, that dozens of “severe” errors
15 exist. Ascentive then offers to remove these fabricated errors, in exchange for \$29.95.

16 5. Ascentive markets PC SpeedScan Pro as a software product, however, purchasing
17 customers are actually made to inadvertently sign-up for a yearly recurring subscription service.
18 Ascentive does not conspicuously disclose this information, and Ascentive stifles consumer
19 attempts to reverse these undesired charges.

20 6. When a consumer downloads PC SpeedScan Pro, or any other software developed
21 by Ascentive, Ascentive surreptitiously installs an additional application called the “Acentive
22 Performance Center” onto the consumer’s PC. This application, installed without permission of
23 the user, is designed to conduct ongoing “scans” of the consumer’s PC and recommend the
24 purchase of additional software from Ascentive. These recommendations are displayed in
25 exasperating excess, usually in the form of ominous “pop-ups.” These pop-up warnings
26 supposedly alert the user about errors or nefarious spyware that is on the consumer’s PC and
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1 requires immediate action by the consumer. The Ascentive Performance Center is little more
2 than a marketing ploy by Ascentive to induce consumers to purchase its other products.

3 7. Customers that recognize the deceptive nature of Ascentive's software and
4 demand to receive their money back are met with unfair and deceptive business practices by
5 Ascentive that make it virtually impossible to receive a refund.

6 8. To induce users into paying for Ascentive's products described *supra*, Ascentive
7 has engaged in misleading and false advertising practices.

8 9. Accordingly, thousands of consumers have been unlawfully tricked into paying
9 for Ascentive's nefarious software with no recourse to recover their costs.

10 10. In sum, Ascentive has intentionally engaged in a systematic pattern of fraud and
11 deception through the design of its software products and its advertising practices. Ascentive's
12 actions not only demonstrate a complete lack of regard for consumer rights, but also violate
13 numerous state laws.

14 PARTIES

15 11. Plaintiff Douglas Ledet is a resident of Sebeka, Minnesota.

16 12. Ascentive LLC is a Delaware Limited Liability Company with its headquarters
17 and principal place of business at 201 Spring Garden Street, Suite 400, Philadelphia, PA 19123.
18 Ascentive does business throughout the State of Pennsylvania, the United States, and the world.

19 JURISDICTION AND VENUE

20 13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d). At
21 least one Class member is a citizen of a different State than Ascentive, and the amount in
22 controversy exceeds, exclusive of interest, fees and costs, \$5,000,000.00. Plaintiff and the Class
23 seek restitution and disgorgements of any funds improperly obtained by Ascentive, and seek
24 injunctive relief as well as to recover damages, attorneys' fees, and costs.

1 14. Personal jurisdiction and Venue are proper in this Court because Ascentive is a
2 company headquartered in this district and/or because the improper conduct alleged in the
3 Complaint occurred in, was directed from, and/or emanated or exported from Pennsylvania.

4 **FACTUAL BACKGROUND**

5 **I. Ascentive Designed SpeedScan Pro to Intentionally Deceive Consumers By Recognizing** 6 **False “Severe” Errors and Then Selling “Fixes” For These Non-Existent Problems.**

7 15. Upon downloading SpeedScan Pro, a user is directed to a supposed free
8 diagnostic scan. If the software discovers threats present on the system, the software will
9 prominently and ominously display that information.

10 16. In order to fix these errors, Ascentive requires that the user purchase Ascentive’s
11 software.

12 17. What Ascentive does not inform the user, however, is that no matter if any
13 problems actually exist on the consumer’s PC, the software will invariably indicate that errors
14 are present. These errors, known as “false positives” because the software returns positive
15 results that do not actually exist, are fabricated by Ascentive in an attempt to scare consumers
16 into purchasing the software.

17 18. In the simplest terms, Ascentive always claim that a user has PC errors, regardless
18 of whether they exist or not. In an effort to scare the consumer into purchasing the software,
19 Ascentive displays these results in such a way that would frighten the average consumer into
20 believing his or her computer is seriously jeopardized. These results are always accompanied by
21 ambiguous technical jargon, provided by Ascentive that is indecipherable to the average
22 consumer, but appears ominous.

23 19. Through his attorneys, Plaintiff has employed independent cyber security experts
24 to investigate Ascentive’s software. The results of these tests have further unmasked the fraud
25 being perpetrated by Ascentive.

26 20. After a fresh installation of Windows 7 on a clean virtual PC, never connected to
27 the Internet, SpeedScan Pro detected twenty-two (22) “severe” errors on the pristine, unused PC.
28

1 After purchasing the software and running the “fix” for these errors, a subsequent scan revealed
2 that zero (0) errors existed on the PC. However, and illustrative of the fraud being committed by
3 Ascentive, after simply uninstalling and reinstalling SpeedScan Pro, Ascentive’s software then
4 indicated that ten (10) additional errors existed on the PC.

5 21. Put another way, SpeedScan Pro first indicated that twenty-two (22) severe errors
6 existed on a brand new PC, and after “fixing” these errors, returned an additional ten errors after
7 simply uninstalling and re-installing the software. The situation is clear then, either Ascentive’s
8 software itself is causing these “errors,” or Ascentive is detecting false positives on consumers’
9 PCs in an attempt to scare, and subsequently induce, the user to purchase its software.

10 22. Upon information and belief, Ascentive’s SpeedScan Pro software is unlawfully
11 designed to return false positives. Real errors detected by the software are indicated in such a
12 way to exaggerate the severity of these problems. The foregoing practices are done in an effort
13 to deceive consumers into purchasing Ascentive’s software.

14 **II. Ascentive surreptitiously bundles its own advertising/marketing application, the**
15 **Ascentive Performance Center, with all of its software products and installs it onto**
consumers’ PCs without permission to further perpetuate fraudulent sales.

16 23. Unbeknownst to consumers, Ascentive secretly bundles additional software with
17 SpeedScan Pro and its other products. This software, called the “Ascentive Performance
18 Center,” is installed seamlessly, in tandem, with SpeedScan Pro, or any other Ascentive product.
19 The installation of this additional software is performed without the consumer’s consent.

20 24. Thereafter, ostensibly, the Ascentive Performance Center performs continuous
21 “scans” of the user’s computer, deploying pestering pop-up advertisements recommending that
22 the individual purchase additional software from Ascentive to fix threatening “errors,” junk files,
23 or spyware present on the system.

24 25. Although the Ascentive Performance Center is included in the installation of all of
25 Ascentive’s software products, it provides no meaningful functionality to consumers. Its sole
26 purpose is to alarm consumers and scare them into buying additional Ascentive products by
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1 displaying frightening messages about impending harms that threaten their computers. These
2 harms identified by Ascentive are almost completely fabrications or are vastly overly
3 exaggerated trivial problems.

4 26. Upon information and belief, many, if not all, of the errors identified by the
5 Ascentive Performance Center are fictional, and/or overstated in such a way to induce users to
6 purchase software from Ascentive.

7 27. Upon information and belief, Defendant has intentionally bundled the Ascentive
8 Performance Center with all of its products in an attempt to nefariously advertise its other
9 software without the consent of consumers.

10 **III. Ascentive Deceptively Renews Subscriptions for its Services and Intentionally Makes**
11 **the Cancellation Process Confusing and Arduous.**

12 28. Ascentive markets its products as stand-alone software; however, in actuality
13 Ascentive sells annual licenses to *use* its software. Ascentive bills its customers on a recurring
14 yearly-basis. In order to cancel, Ascentive customers must take steps to affirmatively cancel their
15 automatically-renewing license agreement, or else the credit card used to originally purchase
16 Ascentive's software will be charged.

17 29. Ascentive does not conspicuously inform consumers of its automatic renewal
18 practices, and has implemented practices that make it extremely difficult for customers to cancel
19 the yearly license agreement.

20 30. Upon information and belief, Ascentive has intentionally designed its cancellation
21 process to be extremely difficult in an effort to continue charging its customers renewal fees.

22 31. Upon information and belief, Ascentive's cancellation process is unnecessarily
23 onerous and designed in such a way as to encourage users to abandon the cancellation process,
24 thereby securing additional renewal charges for Ascentive.

25 32. Upon information and belief, Ascentive continues to charges its customers' credit
26 cards, even after Ascentive receives notice of cancellation.

1 **IV. Ascentive's Advertisements are False and Misleading.**

2 33. Ascentive advertises its software products through numerous mediums, including
3 radio, television, and the World Wide Web.

4 34. In its commercials, Ascentive claims that visiting **www.FinallyFast.com** can result
5 in the removal of junk files, spyware, adware, and registry errors. *See*, FinallyFast Commercial,
6 <http://www.youtube.com/watch?v=G5mGAUwMbXg> (last visited January 12, 2011). The
7 commercial further states that an individual can save "hundreds, if not thousands of dollars" by
8 performing a free scan with the software located at Ascentive's website. *Id.* Ascentive asserts
9 that its software "Makes Any PC Run Faster..." *Id.*

10 35. Ascentive advertises heavily through the Internet by displaying advertisements in
11 the form of banners splashed on the top or side of websites. Many of these advertisements are
12 aesthetically similar to an error message displayed by popular operating systems, such as
13 Windows XP.

14 36. These advertisements inform the user, in a highly threatening manner, that errors
15 exist on that individual's computer, and provide a link to "fix" these errors. Ascentive has
16 chosen to display its advertisements this way in an attempt to deceive non-technical users into
17 believing that the user's operating system is warning him or her about errors on their computer.
18 These advertisements by Ascentive, posing as error messages, are deployed to trick the user into
19 purchasing Ascentive software.

20 37. None of these advertisements disclose the fact that its software will automatically
21 install the Ascentive Performance Center, discussed *supra*, and continuously harass the user to
22 purchase additional software from Ascentive. In fact, even if an individual performs a free scan
23 with Ascentive's software and ultimately decides *not* to purchase the application, the Ascentive
24 Performance Center will, nonetheless, continue to display ominous pop-up ads in an attempt to
25 scare the user into purchasing additional software.

26 38. Upon information and belief, Ascentive has intentionally designed its
27 advertisements to a) deceive non-technical users into believing its advertisements are actually
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1 warnings displayed by the individual's operating system, b) falsely report that the user's
2 computer has "errors," and c) to misrepresent and/or overstate the effectiveness of its software
3 products.

4 **V. Plaintiff Douglas Ledet's Experience**

5 39. In January of 2009, Ledet navigated to Ascentive's website and clicked on a link
6 that purported to perform a "free scan" of Ledet's computer.

7 40. Included within the product downloaded from Defendant's website was the
8 Ascentive Performance Center. Ledet did not consent to the installation of the Ascentive
9 Performance Center, and was unaware that this software would be simultaneously installed with
10 the PC SpeedScan Pro product.

11 41. After the "free scan" was performed, a pop up window appeared on Ledet's
12 computer screen stating that SpeedScan Pro had detected "errors" on his PC. The supposed scan
13 also informed him that by removing these errors, there would be improvement to his PC in
14 numerous ways. *See*, Exhibit B, attached hereto as a true and accurate copy of the results of an
15 Ascentive scan.

16 42. As requested by Defendant, Ledet clicked on the "Fix Now" button and was
17 directed to a purchase screen wherein Ledet purchased the PC SpeedScan Pro for the price of
18 \$29.95.

19 43. However, as discussed above, at least some of the "errors" purportedly "detected"
20 by PC SpeedScan Pro were false positives that did not exist.

21 44. Ascentive intentionally misrepresented that "errors" were "detected" on Ledet's
22 PC, and/or overstated the severity of problems that did exist on his computer.

23 45. As the errors did not exist on Ledet's computer in the first place, PC SpeedScan
24 Pro failed to "fix" the computer or enhance the computer's speed.

25 46. After installation, Ascentive's software continually displayed pop-ups on Ledet's
26 computer recommending that he purchase additional Ascentive software.

47. Later in 2009, Ledet received an e-mail from Ascentive indicating that his credit card would be charged for a renewal of services in conjunction with PC SpeedScan Pro.

48. Ledet sent Ascentive e-mails, traditional mail, and used Ascentive's online chat mechanism to inform Ascentive that it was not authorized to charge his credit card.

49. Nevertheless, on April 20, 2010, Ledet received yet another e-mail indicating that his credit card would be charged by Ascentive.

CLASS ALLEGATIONS

50. Plaintiff Douglas Ledet brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of himself and a class and subclass of similarly situated individuals (the “Class”) defined as follows:

(A) **The Fraudulent Purchase Class:** All individuals in the United States who have purchased Ascentive's software.

(B) **The Unauthorized Renewal Subclass:** All individuals whose subscriptions for products or services by Ascentive were renewed without authorization.

Excluded from the Class are Ascentive, its legal representatives, assigns, and successors, and any entity in which Ascentive has a controlling interest. Also, excluded is the judge to whom this case is assigned and the judge's immediate family.

51. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time, but on information and belief, Ascentive has contracted with thousands of Class members throughout the country, making joinder of each individual member impracticable. Ultimately, the Class and Subclass members will be easily identified through Ascentive's records.

52. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class and Subclass. Plaintiff, the Class, and Subclass sustained damages as a result of Ascentive's uniform wrongful conduct during transactions with Plaintiff, the Class, and

1 Subclass. Plaintiff's claims are typical of the claims of all of the other members of the Class and
2 Subclass.

3 53. **Adequate Representation:** Plaintiff will fairly and adequately represent and
4 protect the interests of the Class and Subclass, and has retained counsel competent and
5 experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to
6 those of the Class or Subclass, and Ascentive has no defenses unique to Plaintiff. Plaintiff and
7 his counsel are committed to vigorously prosecuting this action on behalf of the members of the
8 Class, and have the financial resources to do so. Neither Plaintiff nor his counsel have any
9 interest adverse to those of the other members of the Class or Subclass.
10

11 54. **Appropriateness:** This class action is appropriate for certification because class
12 proceedings are superior to all other available methods for the fair and efficient adjudication of
13 this controversy and joinder of all members of the Class and Subclass is impracticable. The
14 damages suffered by the individual members of the Class and Subclass will likely be small
15 relative to the burden and expense of individual prosecution of the complex litigation
16 necessitated by Ascentive's wrongful conduct. Thus, it would be virtually impossible for the
17 individual members of the Class and Subclass to obtain effective relief from Ascentive's
18 misconduct. Even if members of the Class and Subclass could sustain such individual litigation,
19 it would not be preferable to a class action because individual litigation would increase the delay
20 and expense to all parties due to the complex legal and factual controversies presented in this
21 Complaint. By contrast, a class action presents far fewer management difficulties and provides
22 the benefits of single adjudication, economy of scale, and comprehensive supervision by a single
23 court. Economies of time, effort, and expense will be fostered and uniformity of decisions will
24 be ensured.
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1 **55. Policies Generally Applicable to the Class:** This class action is also appropriate
2 for certification because Ascentive has acted or refused to act on grounds generally applicable to
3 the Class and Subclass, thereby requiring the Court's imposition of uniform relief to ensure
4 compatible standards of conduct toward the members of the Class and Subclass, and making
5 final injunctive relief appropriate with respect to the Class and Subclass as a whole. Ascentive's
6 policies challenged herein apply and affect members of the Class and Subclass uniformly and
7 Plaintiff's challenge of these policies hinges on Ascentive's conduct with respect to the Class
8 and Subclass as a whole, not on facts or law applicable only to Plaintiff. Ascentive has acted and
9 failed to act on grounds generally applicable to Plaintiff and the other members of the Class and
10 Subclass, requiring the Court's imposition of uniform relief to ensure compatible standards of
11 conduct toward members of the Class and Subclass.
12

13 **56. Commonality and Predominance:** Common questions of law and fact exist as to
14 all members of the Class and Subclass and predominate over any questions affecting only
15 individual members:
16

17 a) whether Ascentive has intentionally designed its software to deceive
18 consumers into purchasing its products;

19 b) whether Ascentive has breached its express warranties;

20 c) whether Ascentive has intentionally engaged in false and misleading
21 advertising;

22 d) whether Ascentive's conduct described herein constitutes a breach of
23 express warranties pursuant to the Pennsylvania Commercial Code;
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e) whether Ascentive's conduct described herein constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. § 201-1, *et seq.*);

f) whether Ascentive's conduct described herein constitutes a breach of contract;

g) whether Ascentive unjustly received and/or continues to receive money as a result of its conduct described herein, and whether under principles of equity and good conscience, Ascentive should not be permitted to retain those monies.

57. Plaintiff reserves the right to revise the foregoing "Class Allegations" and "Class Definitions" based on facts learned in discovery.

FIRST CAUSE OF ACTION
Breach of Express Warranties
Pursuant to 13 Pa. Cons. Stat. § 2313
(On Behalf of Plaintiff, the Class, and the Subclass)

58. Plaintiff incorporates by reference the foregoing allegations.

59. Pursuant to Pennsylvania Commercial Code § 2313, the sale of Ascentive's software was accompanied with an express warranty of merchantability created by affirmations of facts and promises made by Ascentive through its advertising and websites.

60. Plaintiff, the Class, and the Subclass, relied upon these affirmations and promises when purchasing Ascentive's products and services.

61. The express warranty of merchantability provided by Ascentive included affirmations of fact and promises that its software would truthfully identify PC errors. In actuality, Ascentive designed its software to identify false positives to induce consumers into purchasing its products and services.

62. By serving this Complaint, Plaintiff, the Class, and the Subclass hereby give Ascentive notice that it has breached its express warranty of merchantability. Plaintiff, the Class, and the Subclass request maximum damages under the Pennsylvania Commercial Code.

63. Accordingly, Plaintiff, the Class, and the Subclass are entitled to maximum damages as provided by the Pennsylvania Commercial Code.

SECOND CAUSE OF ACTION
Violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law
Pursuant to 73 P.S. § 201-1, et seq.
(On Behalf of Plaintiff, the Class, and the Subclass)

64. Plaintiff incorporates by reference the foregoing allegations.

65. Ascentive engaged in a deceptive and misleading course of conduct and advertising intended to deceive and significantly confuse consumers into purchasing its software products, which constitutes unconscionable commercial practices, deception, fraud, false promises, false pretenses and/or misrepresentations in its interactions with Plaintiff, the Class, and Subclass in violation of the UTPCPL. (73 P.S. § 201-1, *et seq.*).

66. Ascentive is a "person" as defined in the UTPCPL. (73 P.S. § 201-2(2)).

67. Ascentive is/was engaged in "trade and "commerce" as defined in the UTPCPL. (73 P.S. § 201-2(2)).

68. Ascentive violated the UTPCPL by engaging in fraudulent and/or deceptive conduct that created the likelihood of confusion or misunderstanding, as detailed herein. (73 P.S. § 201-2(4)(xxi)).

69. By and through the acts described herein, Ascentive represented that its services had characteristics or benefits, which they do not, in fact, have in violation of the UTPCPL. (73 P.S. §§ 201-3 and 201-2(v)).

70. Ascentive's misrepresentations in its advertisements, websites, and other documentation were likely to mislead a reasonable consumer who was acting reasonably under the circumstances into believing that Defendant's software would truthfully identify and remove harmful errors from the user's PC, and would not deceptively install proprietary advertising software on the individual's PC. Plaintiff, the Class, and Subclass relied on Ascentive's misrepresentation to their detriment.

71. Plaintiff, the Class, and Subclass suffered harm as a direct and proximate result of the violations of law and wrongful conduct of Ascentive.

72. Accordingly, Ascentive is liable to Plaintiff, the Class, and Subclass for (i) actual damages pursuant to 73 P.S. § 201-9.2(a), (ii) statutory damages pursuant to 73 P.S. § 201-9.2(a) for each separate violation by Ascentive, (iii) treble damages pursuant to 73 P.S. § 201-9.2(a) for each separate violation by Ascentive, (iv) punitive damages against Ascentive, and (v) reasonable attorneys' fees and costs pursuant to 73 P.S. § 201-9.2(a). In addition, Ascentive should be enjoined from further perpetrating the unlawful and wrongful acts described herein.

THIRD CAUSE OF ACTION

Breach of Contract

(On Behalf of Plaintiff, the Class, and the Subclass)

73. Plaintiff incorporates by reference the foregoing allegations.

74. Plaintiff and members of the Class and Subclass entered into agreements with Ascentive whereby Ascentive agreed to sell and Plaintiff, the Class, and the Subclass agreed to give Ascentive a fixed amount in exchange for software that would remove threats from their computers.

75. Ascentive expressly and/or impliedly agreed to provide Plaintiff, the Class, and the Subclass a product that would remove threats from their computer.

76. Ascentive further expressly and/or impliedly agreed to carry out its obligations in good faith and fair dealing.

77. Ascentive breached its contractual obligations by providing Plaintiff and the Class and Subclass with false analysis that reported threats that did not exist, or inflated the true nature of threats, in order to sell services to the Plaintiff, Class, and the Subclass that were unneeded.

78. Ascentive further breached its contractual obligations by providing a product that did not remove threats from its consumers' computers.

1 79. Plaintiff, the Class, and the Subclass have performed their obligations under the
2 contracts. The aforementioned breaches of contract have proximately caused Plaintiff, the Class,
3 and the Subclass economic injury and other damages

4 **FOURTH CAUSE OF ACTION**
5 **Breach of the Implied Covenant of Good Faith and Fair Dealing**
6 **(On Behalf of Plaintiff, the Class, and the Subclass)**

7 80. Plaintiff incorporates by reference Paragraphs 1-56.

8 81. Plaintiff hereby brings this claim in the alternative to his Breach of Contract
9 claim.

10 82. In order to benefit from Ascentive's supposed threat removal services, Plaintiff,
11 the Class, and the Subclass affirmatively allowed Ascentive's software to be installed on their
12 computers.

13 83. Ascentive's agreement to install software to diagnose and remove threats from
14 consumers' computers in exchange for fees is a valid and enforceable contract between Plaintiff,
15 the Class, and the Subclass on the one hand, and Ascentive on the other.

16 84. Ascentive breached the provisions of the agreement, specifically not honoring its
17 responsibilities to perform truthful scans "to see which errors and corrupt files may be crippling
18 your PC's performance." See, Exhibit A.

19 85. Pennsylvania contract law recognizes the implied covenant of good faith and fair
20 dealing in every contract.

21 86. Implicit in the Agreement, along with the explicit provisions, were contract
22 provisions that prevented Ascentive from engaging in conduct that frustrated or injured
23 Plaintiff's, the Class's, and the Subclass's rights to receive the benefits of the Agreement.

24 87. Ascentive has an affirmative obligation to honestly diagnose all problems from on
25 consumers' computers and to honestly relate whether problems exist. This obligation is a
26 material term of the agreement. Ascentive did not honor this obligation.
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1 88. Furthermore, implicit in the terms of the Agreement was Ascentive's obligation to
2 comply with 73 P.S. § 201-1, *et seq.*, to be truthful in its advertisements, and accurately disclose
3 the functionality of its software products. Ascentive did not honor this obligation.

4 89. Ascentive breached the implied covenant of good faith and fair dealing by failing
5 to honestly and accurately inform consumers about the true nature of their computers, and further
6 by failing to fully comply with the proscriptions of applicable statutory law.

7 90. Ascentive's misconduct and breach of the implied covenant of good faith and fair
8 dealing as described herein resulted in injury to Plaintiff, the Class, and the Subclass.

9 **FIFTH CAUSE OF ACTION**

10 **Unjust Enrichment**

11 **(On Behalf of Plaintiff, the Class, and the Subclass)**

12 91. Plaintiff incorporates by reference Paragraphs 1-56.

13 92. Plaintiff hereby brings this claim in the alternative to his Breach of Contract
14 claim.

15 93. Ascentive has knowingly received and retained benefits from Plaintiff, the Class,
16 and Subclass under circumstances that would render it unjust to allow Ascentive to retain such
17 benefits.

18 94. By falsely informing Plaintiff, the Class, and Subclass that they needed to pay
19 upfront monies to repair problems that did not exist on their computers, Ascentive knowingly
20 received and appreciated benefits at the expense and to the detriment of Plaintiff, the Class, and
21 Subclass.

22 95. Ascentive's receipt of monies from Plaintiff, the Class, and Subclass, allowed it to
23 utilize those monies for its own purposes, without expending resources to perform its obligations
24 under the contract.

25 96. Ascentive appreciates or has knowledge of that benefit.

97. Under principles of equity and good conscience, Ascentive should not be permitted to retain the monies belonging to Plaintiff, the Class, and Subclass that they were paid and that Ascentive unjustly received as a result of its misconduct alleged **herein**.

98. Accordingly, Plaintiff, the Subclass and the Class seek full disgorgement and restitution of any amounts Ascentive has retained as a result of the unlawful **and/or wrongful** conduct alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Douglas Ledet, on behalf of himself the Class and the Subclass, respectfully request that this Court issue an order:

A. Certifying this case as a class action on behalf of the Class defined above, appointing Douglas Ledet as class representative, and appointing their counsel as class counsel;

B. Declaring that Ascentive's actions, as set out above, violate the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. § 201-1, *et seq.*), and constitute unjust enrichment, breach of contract, and breach of express warranties pursuant to 13 Pa. Cons. Stat. § 2313;

C. Award damages, including statutory and punitive damages where applicable, to Plaintiff, the Class, and the Subclass in an amount to be determined at trial;

D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class and the Subclass, including, *inter alia*: (i) an order prohibiting Ascentive from engaging in the wrongful and unlawful acts described herein; and (ii) requiring Ascentive to disclose and admit the wrongful and unlawful acts described herein and (iii) requiring Ascentive to fully disclose the true nature of its software products in the future;

E. Award Plaintiff, the Class, and the Subclass their reasonable litigation expenses and attorneys' fees;

F. Award Plaintiff, the Class, and the Subclass pre- and post-judgment interest, to the extent allowable;

1 G. Enter such other injunctive and/or declaratory relief as is necessary to protect the
2 interests of Plaintiff, the Class, and the Subclass;

3 H. Award such other and further relief as equity and justice may require.

4 **JURY TRIAL**

5 Plaintiff demands a trial by jury for all issues so triable.

6 Respectfully submitted,

7 CAROSELLI, BEACHLER, McTIERNAN &
8 CONBOY

9
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26 Dated: January 18, 2011
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